

KELLER ROHRBACK L.L.P.

June 21, 2018

VIA ELECTRONIC FILING CM/ECF

The Honorable Vince Chhabria
United States District Court, N.D. California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re: Facebook, Inc., Consumer Privacy User Profile Litigation*, 18-md-02843-VC

Dear Judge Chhabria:

I respectfully request appointment as Lead Counsel or Co-Lead Counsel in this multidistrict litigation against Facebook. Consumer data is both valuable and, in the wrong hands, dangerous. Once obtained by the unscrupulous, misuse of this data can lead to harms of many scopes and types. It is difficult to conceive of a more troubling breach of trust than that which lies at the heart of this case against Facebook. By making the records of millions of consumers available without their knowledge or consent, Facebook broke the law, allowed widespread misuse of personal information, and harmed consumers.

Throughout my career, I have taken on corporations that have abused their positions of privilege and power. I have been honored to represent employees, consumers, investors, and state and local governments in a wide variety of complex and class action cases against a broad array of Fortune 500 companies. And I am grateful to work with a group of outstanding Keller Rohrbach attorneys, including Gretchen Cappio and Cari Laufenberg, who share my dedication to achieving the best results possible, often in the face of many risks and challenges.

Keller Rohrbach prides itself on serving the public interest by taking on cases that make a tangible difference in our communities. For example, our managing partner, Lynn Sarko, serves on the Plaintiffs' Executive Committee in *In re National Opiate Litigation*, MDL 2804 (N.D. Ohio), an enormously important litigation seeking to hold opioid manufacturers and distributors accountable for the epidemic devastating communities across the country. I serve on several committees in the case, including the Expert Committee, which I help lead. As we demonstrated in *Jabbari v. Wells Fargo & Co.*, No. 15-02159 (N.D. Cal.), Keller Rohrbach is a firm committed to finding the best – not the easiest – solution to complex problems. In *Jabbari*, for example, with expert assistance, we developed an unprecedented credit impact damage model that allowed us to compensate class members for their increased borrowing costs due to credit injury. Our approach to litigation, with an emphasis on creative solutions, team work, and careful preparation, would serve the class well in this case as well.

i.-ii. Relevant Experience in Consumer Protection and Data Privacy Litigation

Effective leadership in this case will require mastery of several areas of law, including consumer protection statutes as well as federal and state privacy laws. My firm's and my work on behalf of plaintiffs includes extensive experience in each of these areas (*see* Attachment A).

Leadership Experience in Consumer Protection Litigation. I have extensive experience serving in leadership roles in class action cases, including cases that involve consumer protection laws. *Jabbari* is one example that demonstrates my firm's and my skill in this area. Other cases include *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability*

Litigation, MDL No. 2672 (N.D. Cal.), and *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability*, MDL No. 2777 (N.D. Cal.), high-profile multidistrict litigations concerning alleged conspiracies to cheat on emissions tests and to conceal vehicles' true emission levels from regulators and the public. Keller Rohrbach managing partner Lynn Sarko currently serves on the Plaintiffs' Steering Committees in both cases, and I, along with several of my Keller Rohrbach colleagues, are proud to support his work.

Leadership Experience in Data Privacy Litigation. My firm and I have extensive experience and demonstrated leadership in data privacy class actions. The *Jabbari* case involved the misuse of personal information on a grand scale and related statutory claims such as are at issue here. When the law of data security was in its infancy, my firm pursued an employee data breach case through appeal to obtain a groundbreaking standing decision that remains black-letter law in the Ninth Circuit. *Krottner v. Starbucks, Corp.*, 628 F.3d 1139 (9th Cir. 2010).

Keller Rohrbach was appointed to serve as co-lead counsel along with two other firms in *Corona v. Sony Pictures Entertainment, Inc.*, No. 14-09600 (C.D. Cal.), which involved the theft and disclosure of medical, financial, and employment information, and in which plaintiffs asserted consumer protection and data privacy claims such as are at issue here. Working cooperatively with co-lead and other plaintiffs' counsel, Keller Rohrbach helped to successfully resolve this litigation within sixteen months of filing.

Further, the firm's Complex Litigation Group has extensive experience and demonstrated leadership in data privacy class action litigation. For example, my partner Cari Laufenberg is currently co-lead counsel in *In Re: 21st Century Oncology Customer Data Security Breach Litigation*, MDL No. 2737 (M.D. Fla.), multidistrict litigation that involves the unauthorized disclosure of personal and medical information of millions of patients, and likewise involves data privacy claims. During the course of litigation, 21st Century filed for bankruptcy, and Keller Rohrbach demonstrated its ability to successfully navigate the bankruptcy process, negotiating a release that enabled plaintiffs to resume the underlying litigation and to seek meaningful relief that was unlikely in bankruptcy.

Keller Rohrbach also serves in additional court-appointed leadership roles in data breach and privacy protection cases currently pending, including appointments to the Plaintiffs' Steering Committees in *In re: Experian Data Breach Litigation*, No. 15-01592 (C.D. Cal.); and *VTech Data Breach Litigation*, No. 15-10889 (E.D. Ill.).

Experience in Cases Involving Bankruptcy. Given that one of the primary defendants in this litigation has filed for bankruptcy, experience in this field will be critical to obtain the best possible outcome. Keller Rohrbach has significant bankruptcy and financial restructuring experience and expertise, as demonstrated by the involvement of my partners Gary Gotto and Chris Graver in *21st Century Oncology*, as well as in other matters, including *In re Enron Corp. ERISA Litigation*, MDL No. 1446 (S.D. Tex.) (obtaining stay relief and successfully defending against a motion to subordinate claims); and *In re WorldCom, Inc. ERISA Litigation*, No. 02-4816 (S.D.N.Y.) (successfully defending against a motion to subordinate claims and negotiating a simultaneous resolution of claims in the bankruptcy and district courts).

iii.-iv. Ability to Commit Time and Resources and to Work Cooperatively

This litigation will involve a long-term commitment, with work extending beyond any resolution between the parties. If appointed as Lead Counsel or Co-Lead Counsel, my firm and I

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will be in it for the long haul. I am well aware of the substantial time and financial commitment required to prosecute complex litigation, and am willing and able to commit to this process. Further, Keller Rohrbach is able to commit the significant personnel and financial resources that will be necessary to prosecute this matter efficiently and effectively. Moreover, my firm will advance all costs without use of third-party litigation funding.

My firm and I have demonstrated our ability to work cooperatively with other counsel to advance the interests of plaintiffs and class members. Keller Rohrbach works collaboratively with counsel in innovative ways to obtain significant results, and has been praised by courts for its ability to do so.

Here, given the complex legal and factual issues—including the existence of numerous unknown defendants, which will likely require extensive discovery in a short timeframe—the efficient and effective prosecution of this action will require moving forward on multiple tracks concurrently. Because of the complex and multidimensional nature of this litigation, the interests of plaintiffs and proposed class members may be served by appointing two Co-Lead Counsel, as it may facilitate efficient and effective coordination of simultaneous efforts on multiple fronts. Keller Rohrbach has successfully collaborated with many of the other counsel who have filed related cases now consolidated before this Court.

v.-vi. Ability To Prosecute Litigation Efficiently, Effectively, and Economically

My extensive experience leading complex and class action litigation makes me well-suited to oversee the efficient and economical management of efforts by counsel for plaintiffs. My firm employs cutting-edge technology and case management techniques, which contribute significantly to our efficient and economical litigation of cases nationwide.

As in other matters, if appointed, I will manage this case efficiently. I will implement fair and transparent management protocols, including close oversight of all assignments. I will also coordinate work to avoid duplication and redundancy, assign tasks to attorneys commensurate with experience and expertise, and ensure accountability for the timely completion of tasks. Further, I will implement regular reporting and auditing of time and expenses to protect against inefficiencies, and will provide regular updates among plaintiffs' counsel regarding case progress.

I welcome the opportunity to serve as Lead Counsel or Co-Lead Counsel, and am prepared to advance all necessary costs and devote thousands of hours of attorney and professional time for the benefit of plaintiffs and proposed class members. Over twenty other attorneys support my application for a leadership position (*see* Attachment B), and I welcome the opportunity to work cooperatively with plaintiffs' counsel and defense counsel in this important matter.

Respectfully submitted,



Derek W. Loeser

Attachments

cc: All Counsel on ECF